REMARKS

In response to the Examiner's objection to claim 2 and rejection of claim 2 under 35 U.S.C. § 112 for insufficient antecedent basis, claim 2 has been canceled. New claim 3 has been added to clarify the novel and nonobvious features of the invention.

35 U.S.C. § 102 Rejection

In response to the Examiner's rejection of claim 2 under 35 U.S.C. § 102(e) as anticipated by Hoffman, the Applicant respectfully traverses. Claim 2 has been canceled and new claim 3 has been added to clarify the novel and nonobvious features of the invention.

According to patent law, anticipation under § 102 "requires the presence in a single prior art disclosure of each and every element of a claimed invention." Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, (Fed. Cir. 1987). Further, "every element of the claimed invention must be identically shown in a single reference." Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, (Fed. Cir. 1988).

The present invention is not an investment algorithm like Hoffman, but rather a method of physically managing elements of natural habitat that provides superior management to regulatory oversight and can thus greatly reduce the need for government regulation where appropriate. Unlike Hoffman, the certification process of the present invention is not about auditing monetary value, but rather audits actual contracted practices in the field. Unlike Hoffman, the insurance of the present invention is not for an investment under consideration by a software algorithm, but rather to restore pre-existing conditions should a process, experiment, or private verification fail. The present invention has nothing to do with political control or Sustainable Development as the cited prior art.

The present invention is a business structure that gradually accounts for the objective economic value of natural resources that currently lack market value (such as plants, animals, fungi, bacteria, soil mechanics, hydrological properties). It also builds value into those goods by how it combines their properties into useful processes that improve the condition of, or reduce risks associated with the state of mobile commons

such as water, air, or light. That accounting integrates what has been defined as "ecosystem assets" into processes that deliver economically valuable services: whether erosion control, recreational and scenic value, research experiments to reduce the cost and improve the performance of habitat restoration projects and equipment, or processes that offset industrial and urban environmental impacts.

The present invention organizes the elements described in the specification into a structure simple enough to manage complexity. The specification explains the rationale for and operation of each component, including necessary checks and balances. Together, the structural components produce a motivational system-architecture, where superior resource management is rewarded.

In the rejection, the Examiner states that Hoffman teaches ***"A method for managing ecosystem assets, comprising the steps of: developing experimental processes (col. 7, lines 14-27); deviating from said processes to meet conformance specifications to improve condition of ecosystem assets (col. 8, lines 30-53);"*** However, Hoffman teaches:

> General Project Investment Criteria: FIG. 4 illustrates examples of general project investment criteria 220 that the fund manager may require a particular Brownfields project to meet in order for the Brownfields fund to make a BVC. In accordance with the example embodiment of the present invention, the duration of the financing (i.e., the duration of the BVC) for a particular Brownfields project must be less than a predetermined authorized duration (element 405). Additionally, the target rate of return for the Brownfields fund must be greater than a predetermined minimum (element 410). Furthermore, the investment or capital investment amount to the particular BVC must be greater than a predetermined minimum amount (element 415) and less than a predetermined maximum amount (element 420).
>
> (Col. 7, lines 14-27).

Hoffman teaches an algorithm for a computer program, not a method of managing natural resources in the field. For example, element 220 is nothing more than "General Project Investment Criteria" detailed in Figure 4, which contains a list of qualifications for investment capital (e.g. limited duration, return on investment, and a quantity of capital required within predetermined limits) similar to any other investment and neither suggesting or detailing anything about managing natural habitat. Hoffman effectively

states that if element 220 determines a Brownfield generates a significant enough return in a timely manner and without costing too much, then one should invest. Hoffman does not teach or suggest the features of this invention.

An example of the present invention interspersed with the Examiner's points of rejection will be hereinafter provided to assist the Examiner in understanding the terms defined in the specification and how the novel and nonobvious features of the present invention differ from the cited prior art.

Human beings cannot survive without soil, so they are willing to pay for it. Soil is therefore an "**ecosystem asset.**" Streambed down-cutting is a primary cause of soil erosion. To reduce streambed down-cutting in a seasonal stream, the inventor "**developed an experimental process**" as follows:

The inventor does not conduct commercial timber harvesting. Therefore, state laws governing timber harvesting on his property do not apply to tree cutting for maintenance purposes. The State prohibits commercial timber harvesting along streams, supposedly to prevent erosion. The inventor cut trees along a watercourse, thus **deviating from standard commercial timber processes** required under State permit for commercial operations. The wood was carefully wedged into the channel in patterns designed to trap sediments. Thinning allowed penetration of additional light on an alluvial deposit adjacent to the stream. Additional light promoted the growth of Santa Barbara Sedge (*Carex barbarae* – a native plant). The inventor had observed that this sedge has excellent sediment filtration and erosion resistance properties.

After two years of establishment for the sedge, the inventor felled a dead tree into the stream, diverting it over the sedge to see if it could withstand the water flow. It worked better than expected, surviving the largest flow rates in 50 years with no damage.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"deviating from said processes to meet conformance specifications to improve condition of ecosystem assets (col. 8, lines 30-53);"*** However, Hoffman teaches:

> The fund manager may also evaluate the financial strength of the special purpose vehicle to meet contractual obligations (element 625)

> Approved Entity Structures: As noted above, the fund manager may also establish approved entity structures for the special purpose vehicle (element 250). FIG. 7 illustrates examples of approved entity structures. Approved entity structures may include, for example, a joint venture between an original owner of the Brownfields and a real estate developer (element 705), a limited liability company, partnership, trust or corporation formed and owned by a real estate developer (element 710), a limited liability company, partnership, trust or corporation formed and owned by an original owner, a real estate developer and other partners (element 715), and a limited liability company, partnership, trust or corporation formed and owned by a developer and partners to purchase Brownfields over time with fixed installments, contingent installments or fixed installments in combination with cash flow participation (element 720). Other entity structures are, of course, possible. Moreover, the original owner of the Brownfields may be so anxious to remove the Brownfields from its balance sheet that the original owner actually pays another entity, e.g., a special purpose vehicle, to accept title to the Brownfields.
>
> (Col. 8, lines 30-53).

As the above discussion of the experiment has made clear, this is a discussion of methods of pooling capital, organizational structure, and cash flow, none of which have anything directly to do with an ecosystem process. Note also that in the Hoffman patent, the term, "special purpose vehicle," is never defined. Figure 7, detailing "Approved Entity Structures" is all about how a business entity worthy of investment might be owned, not having anything to do with managing natural resources. Hoffman does not teach or suggest the features of this invention.

Returning to our example, if the experiment had been the commercial ecosystem process development the inventor proposes, there would be a contractual obligation to develop a process that reduces down-cutting and sediment release. Those contracts would contain **conformance specifications,** by which to meet performance specifications by which to establish whether the results for which the agreement was formed were met. That would mean a need to identify and observe experimental controls for the process, in locations with similar attributes (conformation) that don't receive the treatment used in the experiment. To extend the concept, one could organize such samples to form an entire factorial array of properties participating in the experiment testing the ranges of a number of variables. That takes means to measure and verify performance to specification against which each participant can compare inputs and outputs on similar bases.

To posit a control case, if the dead tree used to divert the water in the experiment had fallen "naturally," but without prior thinning of the forest there would have been no previously established sedge. The diverted water would then have rutted the alluvium lacking the hard surface root bed and cut a new channel. There would have been no filtration the sedge could have provided. Thus the experimenter reinforced the hypothesis that government specifications for 85% or greater canopy that would have precluded the sedge from developing, and therefore would have caused massive erosion when that tree fell "naturally" (which also takes out the root ball and causes a hole in the slope resulting in "pit and mound" erosion). The experiment demonstrates that government conformance specification to prevent erosion could be a policy resulting in unintended and destructive consequences, just as fire suppression was. The bureaucracy such water quality regulations have spawned has consolidated the timber market into ever larger corporate hands, just as similar regulations have done for over twenty years.

It is the organization of accurate and representative replications over time that establishes fact from confirmed hypothesis. Organizing those replications on common metrics is but one reason why this invention is important. To establish and refine those metrics in a field where so many uncertainties and unique situations apply as in natural habitat over large distances will be a constantly changing objective, which is why the freedom to do it by contract can motivate continuous improvement.

Each individual participant in a market in information derived by such experiments must have reason to trust the data produced by others. This can be done by validating the experimental process was conducted according to the conformance specifications.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"validating that said experimental processes were conducted according to said specifications, (col. 8, lines 43-57)."*** However, Hoffman teaches:

> ... formed and owned by an original owner, a real estate developer and other partners (element 715), and a limited liability company, partnership, trust or corporation formed and owned by a developer and partners to purchase Brownfields over time with fixed installments, contingent installments or fixed installments in combination with cash flow participation (element 720). Other entity structures are, of course, possible. Moreover, the original owner of the

> Brownfields may be so anxious to remove the Brownfields from its balance sheet that the original owner actually pays another entity, e.g., a special purpose vehicle, to accept title to the Brownfields.
>
> Computer Based System: FIG. 8 illustrates a computer based system for Brownfields investing in accordance with an example embodiment of the present invention. Information concerning the Brownfields fund may be stored, managed, and updated at a central site 800.
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> (Col. 8, lines 42-58).

This citation begins with a list of the trustees for investment real estate that is usual for the industry, and how they will fund said investment. It describes an asset with established worth that has been impaired by contamination, not financially impaired by regulation or socialization as is in the present inventor's work. The citation is describing cash flow, with audits of financial transactions by accountants. This invention is about auditing performance to technical specifications in the field. There is no similarity here in the citation by which the applicant's claims were rejected. Further, the above citation says nothing about validation of any kind.

Figure 8 depicts a computer network with lots of lightening bolts that one must surmise represent a communications network managing aspects of the fund that connect to a file server, a data management technology that has been around for decades. While one might use a network to manage data, there is nothing suggested by this citation that has anything to do with validated processes to improve the condition of natural habitat. Again, Hoffman does not teach or suggest the features of this invention.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches "***auditing and certifying that said experimental processes were conducted according to said specifications (col. 6, lines 51-64);***" However, Hoffman teaches:

> Also, the overall investment in the Brownfields fund should be large relative to the size of the BVCs in which the fund invests (element 315). For example, the Brownfields fund may be required to manage between $500 million to $1 billion dollars worth of money, securities, and other assets. A typical BVC may be worth, for example, between $5 million dollars and $50 million dollars. Larger and smaller projects are, of course, possible.
>
> Moreover, the duration of the Brownfields fund, itself, must be long-term relative to the duration of the BVCs in which the fund invests (element 320). For example,

the Brownfields fund may have a duration of three to ten years, while typical BVCs may have durations of 12 months to 120 months.

(Col. 6, lines 51-64).

The first paragraph posits sufficient funding levels by which to distribute risks associated with investment in Brownfield funds. The statement has nothing to do with auditing and certifying the measurement, completeness, and accuracy of technical field data to improve the performance of ecosystem processes.

The second paragraph only talks about the duration of the fund relative to an individual investment. It has nothing to do with how long an experiment in the field might require for a management process to be validated, which could range from days to over a century depending upon the process. For example, a forestry process can take decades to validate.

This inventor has periodically photo-documented this forestry experiment for three years and has invited independent third-party observation of the results, a form of independent **retrospective validation**. Were this development work commercialized, continued monitoring of output variables would then be subject to audit, a **concurrent validation**. The inventor proposes a system of enterprises in third party verification by audit or instrumentation, who are insured to cover unforeseen errors in that service. Such an enterprise could create an entirely new industry.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"assessing the financial cost of experimental processes to improve the condition of said ecosystem assts (col. 7, line 50-col. 8, line 4)."*** However, Hoffman teaches:

> As shown, the Brownfields project may be required to meet certain geographic standards (element 505). For example, in an example embodiment of the present invention, the Brownfields may be required to be located in one of a number of acceptable states or counties in the United States. Moreover, demand for the proposed development project in the particular geographic area should be adequate.
>
> (Col. 7, lines 50-57).

"Geographic standards," as taught by Hoffman and cited by the Examiner have nothing to do with keeping records on the cost of an operation. Nor is this method

necessarily confined to any particular jurisdiction. Indeed, when constructing one of the enterprises this inventor has proposed, a chain of appropriate habitats can serve as resting stops for an enterprise dedicated to the management of migratory species. The geographical scope of that enterprise would have to match the range of that species' migratory range.

Hoffman continues:

> Additionally, the type of contamination associated with the Brownfields may be required to be in one of a number of contamination categories (element 510). For example, in one embodiment of the present invention, contamination due to an oil spill or leakage may be within an "approved" category, while contamination due to nuclear waste may not be.
>
> (Col. 7, lines 58-64).

A Brownfield, as considered by Hoffman, is a bounded region that contains a contaminant. By contrast, the disclosure for this invention observes that a bounded region of any kind, even within the ocean, operates as a process reactor in the time domain with measurable inputs and outputs that transfer across boundaries (in other words, land transforms the state of commons over time; for example air and water might become vegetation which then rots, transpires, and leaves). When combined with human factor inputs, ecosystem processes transform the state of fixed natural resources and mobile commons into economic goods and known liabilities (which derive known compensation upon transfer or indemnification) and externalities (both positive and negative) for which historically no money changes hands. Negative externalities usually engender regulations intended to incorporate the burden of their cost on the purchaser of the industrial good. Unfortunately, positive externalities are usually socialized, an injustice this inventor's method tends to correct.

This invention, when managing, for example, the experimental process of thinning the forest to add light to the floor to grow vegetation to reduce erosion, effectively established a new ecosystem asset, sedge, as having economic value, albeit a value still undetermined by a market. Using that sedge in a drainage to halt or reverse erosion as prescribed in the ecosystem process description then becomes a service. To

understand how the method generates a return on investment in sedge habitat, one then has to have a decent estimate of the cost of the consequences lacking the sedge.

Additional complication arises when the same transformation product of the land process is in some cases beneficial and in other cases harmful, as is often the case in nature. This is where politically driven regulatory architectures are inherently incapable of just resolution. In this example, the experiment is managing silt. Silt is a mobile contaminant in some cases (it supposedly clogs fish gills) and an asset in others (it forms sand bars that slow water and reduce streambed down-cutting as well as replenishing depleted agricultural soils). A market is capable of such objective assessments of risk versus benefit in each individual case, where the legal regulatory architecture cannot so discriminate, showing it incapable of managing competing risks. Thus, the entire basis upon which this invention operates has no similarity to managing money to remediate a Brownfield. This invention treats land as a process reactor capable of managing the condition of mobile commons into and out of the bounded region bounded not only by property lines, but considering boundaries within the time domain. It is not static real estate as Hoffman presumes.

Hoffman continues:

> Also, the fund manager may set forth certain standard for risk management in association with the Brownfields project (element 520). For example, the special purpose vehicle may be required to assure that adequate and trained staff qualified to perform the proposed development of the Brownfields project will be used and risk management is appropriate (e.g., insurance, indemnities).
>
> (Col. 7, line 65 to Col. 8, line 4).

Any project involving large sums of money is insured (except for government, where the insurance is taxpayer-funded). The insurance in Hoffman's invention is not a functional element of the method; it is a conditional determinant for whether or not an investment is worthy of consideration. This citation from Hoffman does not teach or suggest the features of this invention.

The experiment above shows that government rules, supposedly to intended protect streams, can actually cause the very problems upon which they were justified. It established that an economic investment in thinning could not only generate timber

revenue and reduce the hazard of seventy years of government-mandated fire-suppression; it would also yield superior water quality because of the sedge's filtration capability and erosion resistance. Thus the new process provides a potential service that improves the state of water, a mobile commons, by trapping and filtering silt entrained in runoff.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches "***indemnifying failure to produce outputs that meet specifications posited by the experiment and repair or mitigate said failure (col. 8, lines 5-29);"*** However, Hoffman teaches:

> Finally, the fund manager may require evaluation of all available government subsidies, grants, etc (element 525).
>
> (Col. 8, lines 5-6).

Subsidizing treatment of a Brownfield with government grants may protect investors, but it does not suggest or anticipate insuring the project so that, if it fails technically, the money is pre-allocated to protect ecosystem assets. The focus of Hoffman is analyzing projects for return on investment for people; it's an invention with which to manage money not to manage natural processes as is this invention.

Hoffman continues:

> Technical Criteria For Special Purpose Vehicles: FIG. 6 shows example technical criteria which the special purpose vehicle (240) may be required to meet in order to be approved by a fund manager. The special purpose vehicle may be required to have a certain level of expertise in real estate development (element 605). For example, the special purpose vehicle may be required to have been involved with at least a specified number of large-scale real estate development projects. For example, the special purpose vehicle may be required to have principals with minimum net worth requirements and references.
>
> (Col. 8, lines 7-17).

This is as close as Hoffman comes to this invention, and it is reduced to but one line: 615, "Expertise in environmental risk management." This is a criterion by which to determine if a firm has the established ability to carry out Brownfield remediation projects. It is not about evaluating the efficacy of the project itself. In effect, this invention would apply to the firm Hoffman's invention is evaluating. Hoffman's

invention doesn't even pretend to be directed toward the direct project management in the field.

Hoffman continues:

> Additionally, the special purpose vehicle may be required to have a certain minimum level of expertise in pollution remediation (element 610). Moreover, the special purpose vehicle may be required to have expertise in environment risk management (element 615). Finally, the special purpose vehicle may be required to have a certain expertise in land use planning (element 620). In one embodiment of the present invention, criteria 610, 615 and 620 may be met by the special purpose vehicle by, for example, retaining, or consulting or partnering with a technical consultant in these areas.
>
> (Col. 8, lines 18-29).

This paragraph of Hoffman's refers to a minimum requirement for expertise, but does not delve into *how* that expertise is validated or insured. By contrast, this invention provides a structure by which that expertise is assured, or where none exists, that it is developed in a credible fashion and indemnified if the attempt fails. Hoffman simply presumes that professional consultants have the relevant expertise in a particular field. This citation from Hoffman does not teach or suggest the features of this invention.

Now, as to whether there really might be investors in such an asset, consider the owner of a dam downstream that doesn't want to have to dredge the reservoir arising either from erosion because canopy regulations have shaded groundcovers to death or fire suppression and logging regulations have allowed catastrophic and un-natural fuel loads to develop resulting in erosion subsequent to a catastrophic fire. Consider the flood hazard of a debris flow resulting from a combusted watershed collapsing the walls of that down-cut stream. Such disasters can cost many millions of dollars. The financial data concerning re-establishing native groundcovers shows the economic worth of that service only so long as insurers are allowed to charge each individual according to the risks they assume, from which regulations currently "protect" the public. The people of the San Bernardino Mountains or the owners of a destroyed reservoir near Denver (after the Hayman Fire) might beg to disagree.

As to "land use planning," the entire focus of Hoffman is at variance to this invention. It presumes that plans are submitted to government planners for approval per

applicable zoning laws. This invention will slowly disintegrate the need for "land use planning" on the part of government and renders zoning in particular unnecessary and counterproductive (zoning has become a hotbed of corruption). This is simply because of the way the invention slowly incorporates market value into uses heretofore lacking any investment potential, which is what justified government protection in the first place. This invention makes the highest and best use readily apparent by price, as Hoffman's invention, upon application of its analysis of the returns on those respective uses, would be able to confirm.

Note that it is the mechanics of this invention's structure which induce an objective market price for the use of each asset. It is a most important feature of this invention, integral to and the objective of every step. It is the absence of police power in that structure which removes the distortions that are used to justify its application in the first place. Police power should be reserved for punishing fraud, not for making political decisions about how private property may or may not be used.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"indemnifying failure to allocate sufficient primary coverage to repair or to mitigate said failure (col. 9, line 49-col. 10, line 4);"*** However, Hoffman teaches:

> As soon as the investment level is high enough (steps 915, 910), the Brownfields fund determines whether or not prospective special purpose vehicles meet the technical criteria (step 920), as discussed above in connection with FIG. 6. Also, the fund manager determines whether or not the special purpose vehicle is in the form of one of the pre-approved entity structures (as described in connection with FIG. 7, for example) (step 925). A list of the pre-approved structures may be stored at the central cite in, for example, one of the databases. The fund manager may use an expert system or another computer-based system to compare the details of the form of the special purpose vehicle (provided by the special purpose vehicle in connection with the proposal) with the pre-approved entity structure. Alternatively, the fund manager may manually perform the comparison. If the special purpose vehicle is not in the form of a pre-approved entity structure, the fund manager may need to review details of the structure of the special purpose vehicle to determine whether or not the special purpose vehicle is in an acceptable form (steps 926, 927). (In an alternative embodiment of the present invention, the pre-determined entity structures are merely suggested structures.)
>
> (Col. 9, line 49 to Col. 10, line 4)

Note that the citation begins with investment level, which presupposes an asset with recognized economic value, namely developable real estate, however encumbered. Thinning forests to encourage sedge as a means to manage erosion has no understood economic worth, indeed, the cost of the bureaucracy to obtain a permit for commercial thinning (now exceeding $40,000, minimum) often precludes such a process. Hoffman's invention is about a financial instrument to analyze existing investments with existing worth, not a habitat management system to create new investment assets with tangible worth where none had existed before. The firms in Hoffman's fund may contract for environmental services, but even these are specifically industrial in nature (for example, incinerating contaminated soil), and are not specifically directed toward managing ecosystem assets. Meanwhile, the legal and bureaucratic costs of Superfund management have consumed 90% of the monies that were supposedly allocated to treat the actual problem. This management method eliminates the need for that Federal and State agency oversight. This citation from Hoffman does not teach or suggest the features of this invention.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"developing natural process descriptions from data derived from said experimental mitigating process operations (col. 10, lines 5-40),"*** However, Hoffman teaches:

> Assuming the special purpose vehicle meets the technical criteria (for example, as described in connection with FIG. 6) and the form of the special purpose vehicle is determined to be acceptable, the Brownfields fund receives a project proposal from the special purpose vehicle (step 930). A Brownfields project proposal may be transmitted to the fund manager via, for example, mail, facsimile, hand delivery, etc., or may be electronically transmitted to the central site via an SPV workstation. Details of the proposal may be manually or automatically entered and stored at the central site.
>
> In the example embodiment of the present invention, once a particular proposal is received, Next, the fund manager determines whether or not the proposed Brownfields project meets the general project investment criteria, for example, as described in connection with FIG. 4 (step 940). If not, the proposal is rejected (step 975). If the proposed Brownfields project does meet the general project investment criteria, the fund manager determines whether or not the proposed Brownfields project meets the technical project criteria, as described in connection with FIG. 5 (step 945). If either of these criteria are not met, the proposal is rejected (step 975).

> According to the present invention, the fund manager may perform steps 920, 940 and 945 using a computer rules-based system (other systems are possible). For example, each of the general project criteria, technical project criteria and technical criteria for the special purpose vehicle may be stored in the system in the form of a rule. Using the rules-based system, the details of the project proposal may be compared to the stored rules. Thus, steps 920, 940 and 945 may be performed automatically at the central site. Alternatively, the criteria may be stored in databases, and printed out by the fund manager. The fund manager could then manually compare the details of the project proposal to the criteria.
>
> (Col. 10, lines 5-40).

The first paragraph describes how an undefined "special purpose vehicle" is transmissible via such novel means as electronic data, facsimile, hand delivery, or mail. The second paragraph describes how any logical person would perform due diligence in evaluating an investment in developable real estate. The third paragraph describes how said evaluation process is automated. While any normal person makes such determinations of the worth of an investment, this has nothing to do with this invention, against which Hoffman is cited. This citation from Hoffman does not teach or suggest the features of this invention.

The natural process description for the example experiment posed above might include the amount of light *Carex barbarae* requires, soil characteristics, rainfall, or competing species with lesser attributes, symbiotes, etc. in a manner similar to a process description for an industrial process. It would describe the necessary stand density by which to adsorb intermittent runoff, the maximum time the plant could survive under water, etc. Metrics would then exist by which to compare use of *Carex barbarae* to a similar sedge, such as *Carex tumulicola*. Such descriptions are derived from ***data from the operation and monitoring of the experiment compared to controls and repetitions***. The key element of a process description in this method is that it is the first step that contains predictive information: if specified inputs and actions are followed, specified results will result within understood tolerances and with actuarially anticipated risks should unanticipated events cause deviations outside anticipated ranges.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"validating and certifying that said natural processes correspond with said process specifications (col. 10, line 62-col. 11, line 10),"*** However, Hoffman teaches:

> Cashflow Overview: FIG. 10 shows an overview of cash flows associated with the present invention. As shown, each Brownfields project 120 may include two sources of cash flows. In particular, both the remediation phase 1010 (i.e., the clean-up) of the Brownfields project 120 and the development/redevelopment (e.g., the actual construction project) may each generate a cash flow for the special purpose vehicle 110.
>
> According to the example embodiment of the present invention, each special purpose vehicle 110 is required under the terms of, for example, the Brownfields Value Contract with the Brownfields fund 100, to pay to the Brownfields fund 100 a certain share of the special purpose vehicle's (future) cash flow. Thus, a cash flow to the Brownfields fund 100 is generated once the special purpose vehicle's cash flow is realized.
>
> (col. 10, line 62 to Col. 11, line 10).

This citation to Hoffman is about cash flow analysis. It does not even contain the words, "validation or "certification." It is not about certifying the accuracy of validated data measuring contractually determined metrics of ecosystem management processes. This citation from Hoffman does not teach or suggest the features of this invention.

As opposed to Hoffman's cash flow analysis, the step described above is to confirm that when the process is repeated as directed in the description, the outputs from the process will meet specification when measured as directed. This step takes the confidence level in the method from retrospective validation to prospective validation, thus greatly reducing the risk of process failure and reducing the cost of indemnification.

When evaluating the posited product resulting from replications of the experiment above, any potential investor in such a service, such as Hoffman's clients, would need to know that the technical and financial data are honestly represented. Because of how the method is organized, the technical validation is already complete to which one would add a certification that the cost data are also validated. The method proposed by this inventor specifies either service to be performed by an insured third party, just as Hoffman's investors would expect the books of the venture at interest to have been certified by an insured CPA. The reasons for this are structural (see Figure 1 of the application), having to do with assuring that the technical process performs as represented, which Hoffman's method simply presumes as a line item.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"assigning financial value to ecosystem assets for their ability to mitigate operational processes (col. 11, lines 19-29);"*** However, Hoffman teaches:

> Initially, data related to each BVC are received and stored at, for example, in a data base at the central site (step 1110). The data may include an identification of the special purpose vehicle, ownership distribution requirements, cash flow requirements, equity contributions and performance requirements. Additionally, data related to each investor and investment contract may be received and stored in the data base at the central site (step 1120). For example, an identification and address of each investor, as well as an indication of each investors total investment, terms of the investment and/or any investment agreements.
>
> (Col. 11, lines 19-29).

Hoffman's structure of a data network and what might be stored on a file server does not teach or suggest anything to do with putting an objective price upon the economic worth of services provided by elements of the natural world.

A private environmental management system is in no way truly a free market if government sets prices (as they do with pollution credits). In this method, pricing is derived from the step of indemnifying repair or mitigation costs incurred as a result of failing to meet the conformance specifications.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"indemnifying failure to produce outputs that meet said performance specifications and mitigate said failure (col. 11, lines 37-42 and figure 7);"*** However, Hoffman teaches:

> A determination is then made as to whether each of the Brownfields projects has met its performance requirements (step 1140). This determination can be made, for example, by comparing the performance requirements of each Brownfields project to the actual cash flow from the special purpose vehicle associated therewith.
>
> (Col. 11, lines 37-42).

This is a conditional branch in an algorithm to determine whether an investment has met preset expectations. It has nothing to do with sufficient insurance to mitigate losses resulting from failure of a natural process, nor is it insurance on the primary investment, as might be demanded in Hoffman's method. Nor does the citation to

Hoffman have anything in common with a business method capable of motivating development of new technologies to mitigate the risk. It has nothing to do with enhancing the performance of naturally occurring processes as a service with economic worth with an objective price. This citation from Hoffman does not teach or suggest the features of this invention.

This inventor's experimental process bootstraps value into previously unrecognized assets by scientific experiment. It justifies a private economic service in managing natural process assets instead of regulatory oversight. It has nothing to do with analyzing existing cash flow for investment in a Brownfield. This method, were it applied to a Brownfield, would serve to generate a cash flow and business opportunity that Hoffman's invention could then evaluate.

Returning to the Examiner's rejection, the Examiner states that Hoffman teaches ***"and indemnifying failure to allocate sufficient primary coverage to mitigate said failure (col. 11, lines 50-57 and figure 7)."*** However, Hoffman teaches:

> Finally, reports can be generated at the central site for distribution to the investors (step 1160), showing, for example, the performance of the Brownfields fund, and possibly each Brownfields project and/or special purpose vehicle. Additionally, each investor may be paid (either electronically or otherwise) a respective share of the total cash flow (i.e., a return on investment) in accordance with the terms of the Investor's Investment Contract.
>
> (Col. 11, lines 50-57).

The citation to generating reports has nothing to do with insurance to cover a failure to verify that output specifications to manage an asset at risk were met or that they were adequate to the task in the first place. Hoffman does not teach or suggest the features of this invention.

Conclusion

In light of the foregoing amendments and remarks, the Applicant respectfully requests that the Examiner withdraw the rejection and allow the pending claim.

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